

ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Klehs Analyst: Raul Guzman Bill Number: AB 671
Related Bills: See Legislative History Telephone: 845-4624 Amended Date: 04/21/2005
Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Inform Taxpayers of 10% Penalty for Failure to Pay Use Tax

SUMMARY

This bill would require the Franchise Tax Board (FTB) to inform taxpayers of the increased penalties imposed for failure to pay use tax to the Board of Equalization (BOE).

SUMMARY OF AMENDMENTS

The April 21, 2005, amendments added in the provisions requiring FTB to notify taxpayers regarding use tax penalties.

This is the department's first analysis of the bill.

PURPOSE OF THE BILL

According to the author's office, the intent of this bill is to increase taxpayer awareness of their obligation to pay use tax.

EFFECTIVE/OPERATIVE DATE

This bill would be effective and operative on and after January 1, 2006.

POSITION

Pending.

ANALYSIS

STATE LAW

State sales tax is imposed upon retailers for the privilege of selling tangible personal property at retail in this state and is measured by gross receipts. The retailer, however, is entitled to receive reimbursement of these taxes from its customers.

State use tax is imposed on any person who purchases tangible personal property for use, consumption, or storage in this state. Generally, use tax is applied in instances where the sale is not made in California but the property is purchased for use in California, such as purchases shipped from out-of-state retailers to a California consumer. The state use tax rate is the same as the sales tax rate for each county. BOE is responsible for collecting sales and use tax.

Board Position:

_____ S	_____ NA	_____ NP
_____ SA	_____ O	_____ NAR
_____ N	_____ OUA	<u> X </u> PENDING

Department Director

Date

Will Bush

4/29/05

Starting in 2004 individuals were allowed to elect to report and remit qualified use tax on certain 2003 California income and franchise tax returns. The election was made if the taxpayer purchased tangible personal property where the storage, use, or other consumption would subject the purchase to the qualified use tax that would otherwise be required to be reported and paid under use tax law. An election to report qualified use tax on California tax returns is irrevocable.

FTB revised some of its 2003 tax forms by adding a use tax line that allowed taxpayers to report and remit qualified use tax. The revisions were done in a form and manner approved by BOE. FTB remits the qualified use tax reported on the California income and franchise tax returns, less FTB's costs to administer the qualified use tax, to BOE.

THIS BILL

This bill would add to the sales and use tax law a 10% penalty when taxpayers fail to report and remit use tax timely.

This bill would also require FTB to revise certain income and franchise tax forms to include information that informs taxpayers of the new penalty for failure to pay use tax timely and the benefit of paying their use tax timely.

This bill would be in effect until January 1, 2008, and repealed as of that date.

IMPLEMENTATION CONSIDERATIONS

Implementing this bill would be completed during the department's normal annual updates if the bill is amended to include the technical considerations.

TECHNICAL CONSIDERATIONS

On page 4, line 15, of the bill, it states that "The Franchise Tax Board shall revise the returns required to be filed...." This would cause the Franchise Tax Board to have to inform taxpayers of the penalty on the tax returns, when in actuality the author's intent is to provide that information in the instructions to the tax return forms. To reflect the author's intent, the bill should be amended to read as follows: "The Franchise Tax Board shall revise information accompanying the returns required to be filed...."

LEGISLATIVE HISTORY

SB 1009 (Alpert, Stats. 2003, Ch 718) required FTB to revise certain tax forms by adding a use tax line so taxpayers could pay their use tax when they filed their income tax returns.

PROGRAM BACKGROUND

The FTB added a use tax line to certain tax forms so that use tax can be reported on those tax forms. The FTB tax booklet instructions do not address penalties or interest owed on used tax.

Currently the FTB receives yearly use tax information from the BOE. The information includes sales and use tax rates by county, general use tax information, guidelines on reporting use tax, and BOE contact information. The yearly information provided by the BOE is added to the instructions and become part of the tax booklets as part of an education and outreach effort for taxpayers.

OTHER STATES' INFORMATION

A review of Michigan, North Carolina, and Utah found that the tax forms instructions for these states do not mention penalties for failure to report use tax.

These three states were reviewed because the use tax line is also an alternative to filing a separate use tax return.

FISCAL IMPACT

This bill would not significantly impact the department's costs, if the changes required by this bill are made to the tax return instructions and not to the actual tax return forms

ECONOMIC IMPACT

This bill would not impact the state's income tax revenue.

LEGISLATIVE STAFF CONTACT

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